

Cost recovery without this waiver would place unacceptable pressures on local rates that are already extremely high, contrary to the very purposes of the USF program. Such rates would further discourage subscription to local telephone service and jeopardize the future availability of service, results which are completely contrary to the goals of the USF rules. Consequently, application of the historic cost requirements would frustrate, rather than foster, realization of the goals of the USF program. Accordingly, AEE respectfully requests waiver of the historic cost requirements of sections 36.611 and 36.612 of the Commission's rules for an interim period as described in greater detail below.

C. Proposed Interim Methodology for High-Cost Loop Support Calculations

AEE proposes to submit to NECA a rolling annualized average of current costs, which will be subject to quarterly true-up adjustments based on actual costs. This methodology previously has met with Commission approval.²³ Final high-cost loop support payments to AEE for the interim period would be based on actual costs for that period. Final payments for periods subsequent to that interim period would be based on the conventional historic data upon which USF payments are based. Data to support initial high-cost support payments to AEE are set forth on Attachment E. Under this proposal, AEE would begin receiving high-cost loop support payments (upon receiving RCA ETC designation) for the period beginning January 1, 2005. Those payments would be calculated based on the estimates set forth in Attachment E, subject to the quarterly true-up mechanism described as follows: For the first quarter (January through March) of 2005, AEE would submit to NECA its actual costs for that quarter by June 30, 2005. This process would continue quarterly, next using six months of actual data, then nine months of

²³ *E.g., Border to Border*, 10 FCC Rcd at 5056.

actual data, etc., until such time as the USF high-cost loop support calculation can be made entirely on the basis of actual historical data. AEE emphasizes that this proposal requires waiver of the Commission's rules for a brief period, lasting only until such time as the calculations reflecting AEE's new plant and expanded operations can be based on historic data, as required under sections 36.611 and 36.612 for AEE's USF high-cost loop support.

D. Waivers of Sections 54.301(b) and 54.903(a)(3) for LSS and ICLS

In a recent order,²⁴ the Commission, on its own motion, granted additional waivers to M&L Enterprises, Inc., d/b/a Skyline Telephone Company ("Skyline Telephone") to effectuate the waivers it intended to grant in *Skyline I*. In particular, the Commission found that its decision to allow Skyline prompt access to "high-cost universal service support" should apply to LSS and ICLS as well as to high-cost loop support.²⁵ However, to effectuate that result, it was necessary to also grant Skyline Telephone a waiver of the deadlines for filing information with USAC relating to LSS and to ICLS as required under section 54.301(b) and section 54.903(a) of the Commission's rules, respectively.²⁶ In addition, the Commission also determined that it was necessary to issue a waiver of the state certification filing requirements set forth in section 54.314(d) of the Commission's rules to allow Skyline Telephone to be eligible to promptly receive high-cost support.²⁷

²⁴ *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Waiver of Sections 54.301(b), 54.314(d), and 54.903(a) of the Commission's Rules*, Order, CC Docket No. 96-45, DA 05-84 (rel. Jan. 14, 2005) ("Skyline II").

²⁵ *Id.* at para. 9.

²⁶ *Id.* at para. 5.

²⁷ *Id.* at para. 4.

For the same reasons as were stated previously with regard to the waiver of the Commission's rules for high-cost loop support, good cause exists to grant AEE these additional waivers to allow AEE to promptly be eligible to receive high-cost support upon obtaining ETC designation. Allowing AEE to promptly be eligible to receive high-cost loop support, LSS, and ICLS will allow much needed reductions to AEE's current local service rates and will encourage local telephone subscribership in a rural area, consistent with the goals of universal service. For these reasons, AEE requests a waiver of the filing deadlines set forth in sections 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the October 1, 2004, and January 1, 2005, state USF certification deadlines set forth in section 54.314(d),²⁸ as necessary to allow AEE to receive LSS and ICLS for the first quarter 2005 (upon obtaining ETC designation).

E. Waiver of Section 69.2(hh) and Section 69.3(e)(6)

As was discussed in *Skyline I*, in order to be a member of NECA and to participate in the NECA pools and tariffs, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.²⁹ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent local exchange carrier ("incumbent LEC") as defined in section 251(h)(1) of the Act. In addition, section 36.611 of the Commission's rules applies only to incumbent LECs.³⁰ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of

²⁸ AEE will request that the RCA provide the necessary USF certification for AEE at its earliest opportunity.

²⁹ *Skyline I*, para. 24.

³⁰ *Id.* at para. 24; 47 C.F.R. § 36.611.

enactment of the 1996 Act (or a successor or assign of such a carrier).³¹ As a newly established carrier that is not a successor or assign of an incumbent LEC, AEE does not meet the statutory definition of an incumbent LEC and, thus, does not meet the definition of a “telephone company” in section 69.2(hh) of the Commission’s rules.

However, as was the case for Skyline Telephone in *Skyline I*, AEE’s circumstances warrant granting AEE a waiver of section 69.2(hh). The purpose of the incumbent LEC restrictions in Parts 36,³² 54,³³ and 69³⁴ is to distinguish competitive LECs from incumbent LECs for purposes of calculating access charges and universal service support, not to impose interconnection requirements.³⁵ AEE is the sole provider of local exchange service in its certificated service area; it is not a competitive LEC. In addition, as a rural telephone company, AEE is exempt from the interconnection requirements of section 251(c) of the Act until it receives a bona fide request for interconnection, services, or network elements, and the RCA makes the requisite findings to terminate AEE’s rural exemption.³⁶ Accordingly, the purposes underlying the incumbent LEC requirements in Parts 36, 54, and 69 of the Commission’s rules are not applicable to AEE’s request to receive high-cost universal service support and to participate in NECA.

³¹ 47 U.S.C. § 251(h)(1).

³² See 47 C.F.R. § 36.611.

³³ See 47 C.F.R. §§ 54.301 and 54.303.

³⁴ See 47 C.F.R. § 69.2(hh).

³⁵ *Skyline I*, para. 27.

³⁶ *Id.* (citing 47 U.S.C. § 251(f)).

Participation in NECA will allow AEE to avoid the costs of filing and maintaining its own company-specific interstate tariffs. AEE currently provides service for 75 to 160 access lines, depending on the season. With such few customers, AEE would incur disproportionately excessive costs to prepare company-specific tariffs. In addition, because of the high cost of providing service to a relatively small number of customers in AEE's remote, isolated location, AEE's company-specific rates have the potential to be extremely high in the future. Accordingly, it is in the public interest to grant the requested waiver to allow AEE and its customers the benefit of cost savings and lower rates available through NECA participation.

In addition to a waiver of the definition of "telephone company" in section 69.2(hh), AEE has been informed by NECA that it must also obtain a waiver of section 69.3(e)(6) of the Commission's rules to allow AEE to enter NECA's Tariff No. 5 outside the annual election period. Therefore, to help expedite its participation in NECA and the public interest benefits such participation will provide to AEE and its customers, AEE also requests a waiver of section 69.3(e)(6) of the Commission's rules as necessary to allow it to enter NECA's Tariff FCC No. 5 outside of the annual election period.

For all of the foregoing reasons, AEE requests that the Commission waive the definition of "telephone company" in section 69.2(hh) of the Commission's rules; waive the incumbent LEC requirements of sections 36.611, 54.301, and 54.303 of the Commission's rules; and waive section 69.3(e)(6) of the Commission's rules to allow AEE to be allowed to promptly participate in NECA pools and tariffs and receive high-cost universal service support.

VI. Conclusion

AEE respectfully requests the following waivers:

- (1) If the Commission determines it is necessary, a waiver of the definition of “study area” contained in the Appendix-Glossary of Part 36 of the Commission’s rules;
- (2) Waiver of sections 36.611 and 36.612 of the Commission’s historical cost rules to allow AEE immediate access to USF high-cost loop support, effective January 1, 2005, based on AEE’s current data for an interim period;
- (3) Waiver of the October 1, 2004, and January 1, 2005, state USF certification deadlines set forth in section 54.314(d) of the Commission’s rules;
- (4) Waiver of sections 54.301(b) and 54.903(a)(3) of the Commission’s rules, to allow AEE to be eligible to receive local switching support (“LSS”) and interstate common line support (“ICLS”) for the period beginning January 1, 2005; and
- (5) Waivers of the definition of “telephone company” in section 69.2(hh) and of the annual election filing deadline in section 69.3(e)(6) to allow AEE to become a member of NECA and to immediately participate in NECA pools and tariffs.

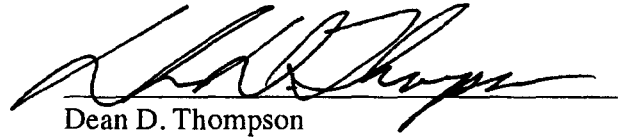
Granting these waivers will ensure administration of the USF in a manner consistent with the Commission’s goal of assisting local exchange carriers in serving high-cost rural areas and maintaining affordable local service rates. Granting these waivers will also allow AEE and its customers the benefit of cost savings and lower rates available through participation in NECA pools and tariffs.

In the event any additional waivers are necessary to expedite AEE’s receipt of USF support and participation in NECA pools and tariffs, AEE requests that such waivers be considered and granted on the Commission’s own motion. If some of the waivers requested

herein will require substantially more time for review than others, AEE respectfully requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

RESPECTFULLY SUBMITTED this 9th day of February, 2005.

KEMPEL, HUFFMAN AND ELLIS, P.C.
Attorneys for Adak Eagle Enterprises, LLC



Dean D. Thompson

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(907) 277-1604

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

December 15, 2004

In reply refer to: Administrative Section
File: U-03-76(1)

Mr. Larry Mayes, General Manager
Adak Eagle, LLC d/b/a
Adak Telephone Utility
P.O. Box 1942
Adak, AK 99546-1942

Dear Mr. Mayes:

Enclosed you will find a new parchment for Certificate of Public Convenience and Necessity No. 702 (Certificate). The service area description and the chronology are attached as Appendix A.

Review the Certificate parchment and Appendix A to ensure they are accurate. Also, please return any Certificates and Appendix A's previously issued to you. Feel free to contact me at (907) 276-6222, ex. 109, if you have any questions pertaining to your Certificate Parchment or if any corrections need to be made to your Certificate Parchment as well.

Sincerely,

REGULATORY COMMISSION OF ALASKA



Dorothy Tauaese-Puletapuai
Administrative Assistant

Enclosures

ATTACHMENT A

PAGE 1 OF 3

Regulatory Commission of Alaska

Certificate of Public Convenience and Necessity No. 702

Having found that the grantee of this certificate is fit, willing, and able to provide the utility services applied for and that such services are required for the convenience and necessity of the public, the Regulatory Commission of Alaska, pursuant to the authority vested in it by AS 42.05, hereby issues this temporary certificate of Public Convenience and Necessity to

Adak Eagle Enterprises LLC d/b/a Adak Telephone Utility

authorizing it to operate a public utility, as defined by AS 42.05.990(4) (B) for the purpose of furnishing

TELECOMMUNICATIONS SERVICE (LOCAL EXCHANGE)

This Certificate is issued under, and subject to, the provisions of AS 42.05 and all rules, regulations, and orders from time to time promulgated by the Commission governing the rates, charges, services, facilities, and practices of utility operations of the kind authorized herein.

The specific nature, scope, terms, conditions, and limitations of the authority granted by this Certificate, as amended to date, are set forth in the appendix hereto and in the following order(s) of the Commission which, by this reference, are incorporated in and made a part hereof as though fully set forth herein.


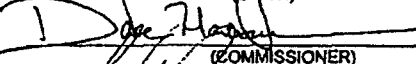
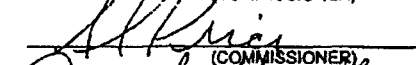
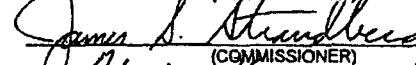
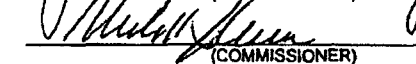
**Docket No.
U-03-76(1)**

**Date of Order
October 8, 2004**

(Chronology and service area description shown on the attached Appendix A)

IN WITNESS THEREOF, the undersigned members of the Commission have executed this Certificate of Public Convenience and Necessity at Anchorage, Alaska on this 16th day of December 2004.

Regulatory Commission of Alaska


(CHAIR)

(COMMISSIONER)

(COMMISSIONER)

(COMMISSIONER)

(COMMISSIONER)

APPENDIX A

Certificate of Public Convenience
and Necessity No. 702 Granted to

Adak Eagle Enterprises LLC d/b/a Adak Telephone Utility
(Local Exchange Telephone Utility)

DESCRIPTION OF SERVICE AREA:

T94S	R194W	Sections:	All
T95S	R194W	Sections:	All
T95S	R195W	Sections:	All
T95S	R196W	Sections:	All
T96S	R193W	Sections:	All
T96S	R194W	Sections:	All
T96S	R195W	Sections:	All
T96S	R196W	Sections:	All Sections on Adak Island
T97S	R195W	Sections:	All Sections of North of 51°47'15" North Latitude
T97S	R196W	Sections:	All Sections of North of 51°47'15" North Latitude
T97S	R197W	Sections:	All Sections of North of 51°47'15" North Latitude on Adak Island

(All of the above in reference to the Seward Meridian)

CHRONOLOGY:

Temporary Certificate Granted: 10/08/04 (U-03-76(1))

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Application by ADAK
EAGLE ENTERPRISE LLC d/b/a ADAK
TELEPHONE UTILITY for a Certificate of
Public Convenience and Necessity to Provide
Local Exchange Service in Alaska

U-03-76

ORDER NO. 3

ORDER CLARIFYING ORDER U-03-76(1),
APPROVING TARIFF SHEETS, REQUIRING FILINGS,
AND AFFIRMING ELECTRONIC RULING

BY THE COMMISSION:

Summary

We clarify which tariff sheets filed by Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility (AEE) were approved by Order U-03-76(1),¹ provide their effective dates, and approve other tariff sheets. We require AEE to file documentation of a Rural Utility Services (RUS) loan commitment. We affirm our electronic ruling denying a request for a status conference.

¹Order Conditionally Approving Application; Approving Tariff, in part; Granting Temporary Certificate; Revoking Temporary Operating Authority; Closing Docket U-00-137; and Requiring Filings, Order U-00-137(9)/U-03-76(1), dated October 8, 2004 (Order U-03-76(1)).

Background

We conditionally approved AEE's application and granted AEE a temporary certificate.² In addition, we required AEE to file, among other things, revised tariff sheets identified in Appendix A to Order U-03-76(1). On October 28, 2004, AEE filed tariff sheet revisions and an explanation of why certain revisions identified in Appendix A to Order U-03-76(1) should not occur.³

On November 22, 2004, AEE requested that we convert its temporary certificate to a permanent certificate. AEE stated that RUS required AEE to obtain a permanent certificate before RUS would release loan funds to AEE.

By Order U-03-76(2),⁴ we required AEE to revise its proposed tariff further, file an updated technical report of its facilities in Adak, and provide documentation of a RUS loan commitment. On January 3, 2005, AEE filed revised tariff sheets, updated engineering studies, and financial statements.⁵

On January 4, 2005, AEE requested that a status conference be held January 7, 2005, or at the earliest time available.⁶ AEE stated that the purpose of the conference was to provide us, among other things, with an update of its plans for upgrading the telephone services in Adak.

² See Order U-03-76(1).

³ *Notice of Filing Revised Tariff*, filed October 28, 2004.

⁴ Order U-03-76(2), *Order Amending Docket Title and Requiring Filing*, dated December 22, 2004.

⁵ *Submission of Tariff Filings and Updated Engineering Studies in Compliance with U-03-076(2) and Additional Financial Information*, filed January 3, 2005.

⁶ *Expedited Request for Status Conference*, filed January 4, 2005.

Discussion

Revised Tariff Sheets

We approved, in part, the proposed tariff AEE filed on March 25, 2004, and required it to revise certain of the tariff sheets or to provide an explanation of why revision should not occur.⁷ We clarify that tariff Sheet Nos. 5, 9, 24-32, 34-39, and 47-51, filed on March 25, 2004, were approved with an effective date of October 8, 2004, by Order U-03-76(1).

On October 28, 2004, AEE filed a revised tariff and an explanation of why certain of the tariff revisions should not be made.⁸ We reviewed this filing and required AEE to file tariff revisions regarding its proposed direct inward dialing (DID) service and directory assistance services.⁹ While we found all other tariff sheets in this filing to be generally reasonable, we did not specifically approve those sheets by Order U-03-76(2). We approve the tariff sheets not related to DID or directory assistance services, tariff Sheet Nos. 1-3, 6-8, 10-23, 33, 40-46, 65-98, and 101-113, filed on October 28, 2004, effective the date of this Order.

On January 3, 2005, AEE submitted tariff revisions for DID and directory assistance services. AEE deleted a section in its proposed tariff which required customers for DID service to enter into a contract for a minimum period of one year. AEE also provided tariff rates and rules for providing directory listings and related databases to directory service providers. We believe that the tariff revisions are reasonable and consistent with our regulations. We therefore approve AEE's revised

⁷ See Order U-03-76(1).

⁸ Notice of Filing Revised Tariff, filed October 28, 2004.

⁹ Order U-03-76(2), Order Amending Docket Title and Requiring Filing, dated December 22, 2004.

tariff sheets for direct inward dialing (DID) and directory assistance and directory services, filed on October 28, 2004, tariff Sheet Nos. 53-63 and 99-100, effective the date of this Order. We also approve tariff Sheet Nos. 4, 52, 64, and 100.1, filed on January 3, 2005, effective the date of this Order.

Technical Report and RUS Loan Commitment

We required AEE to file an updated technical report and additional financing data that demonstrates financial backing.¹⁰ On January 3, 2005, AEE filed an updated technical report and financial data related to its upgrade plan. It has not yet provided documentation of a loan commitment from RUS. When the RUS loan commitment documentation is filed, we can determine AEE's financial fitness. Therefore, we require AEE to file documentation of a RUS loan commitment when it becomes available.

Expedited Request for Status Conference

We deny the expedited request by AEE for a status conference. We are not convinced that the purpose stated by AEE for a status conference warrants the need for it. We have indicated the requirements we need to move this proceeding forward.¹¹ At this time we are primarily awaiting proof of financing from RUS for AEE. The status conference, therefore, appears to be unjustified. However, AEE may file additional information into the record if there are matters related to its services or facilities that it believes we should be made aware.

¹⁰ See Order U-03-76(2).

¹¹ See Orders U-03-76(1) and U-03-76(2).

1 Electronic Ruling

2 We affirm the electronic ruling issued on January 5, 2005, granting the
3 request for expedited consideration of AEE's request for a status conference and
4 denying the request for a status conference.

5
6 ORDER

7 THE COMMISSION FURTHER ORDERS:

8 1. Tariff Sheet Nos. 5, 9, 24-32, 34-39, and 47-51 filed by Adak Eagle
9 Enterprise LLC d/b/a Adak Telephone Utility on March 25, 2004, are approved, effective
10 October 8, 2004.

11 2. Tariff Sheet Nos. 1-3, 6-8, 10-23, 33, 40-46, 65-98, and 101-113
12 filed by Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility on October 28, 2004,
13 are approved, effective the date of this order.

14 3. Tariff Sheet Nos. 53-63 and 99-100 filed by Adak Eagle Enterprise
15 LLC d/b/a Adak Telephone Utility on October 28, 2004, are approved, effective the date
16 of this order.

17 4. Tariff Sheet Nos. 4, 52, 64, and 100.1 filed by Adak Eagle Enterprise
18 LLC d/b/a Adak Telephone Utility on January 3, 2005, are approved, effective the date
19 of this order.

20 5. Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility shall file a
21 notice from Rural Utility Service when and if it receives conditional loan application
22 approval.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

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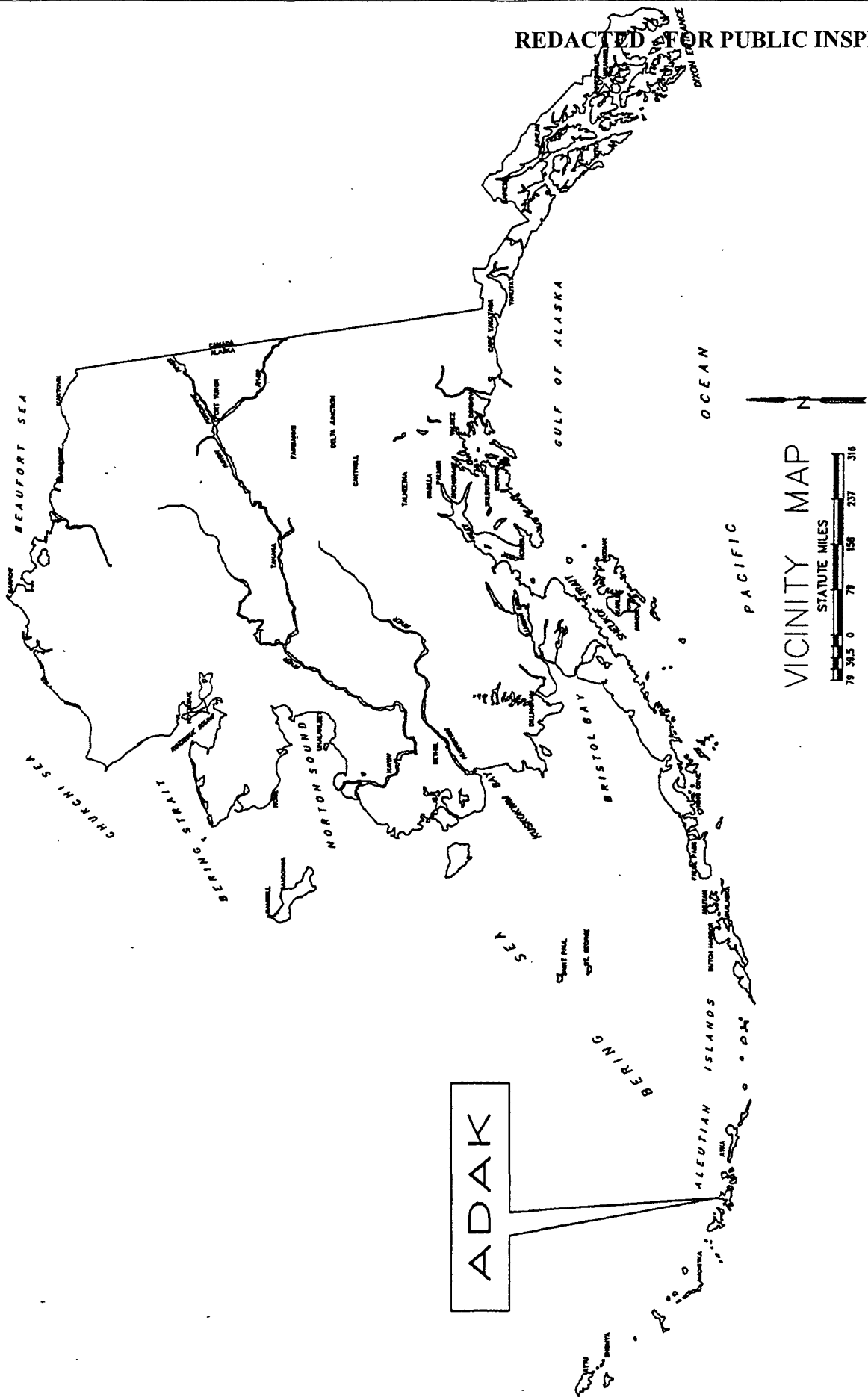
6. The electronic ruling issued on January 5, 2005 is affirmed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 19th day of January, 2005.

BY DIRECTION OF THE COMMISSION
(Commissioners Kate Giard and Anthony A. Price,
not participating.)



Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533



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OCT 28 2004

State of Alaska
Regulatory Commission of Alaska

RCA NO. 702

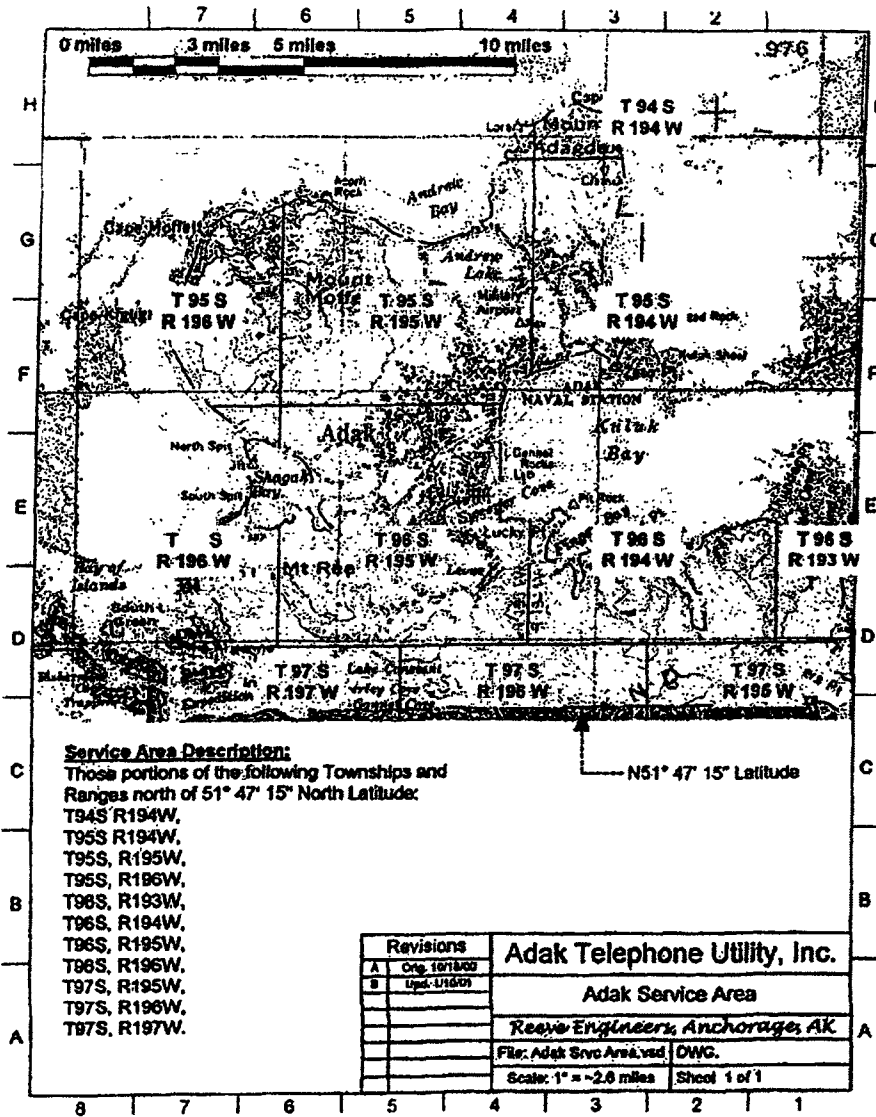
ORIGINAL

SHEET NO. 6

CANCELING

SHEET NO.

ADAK EAGLE ENTERPRISE, LLC dba ADAK TELEPHONE UTILITY



Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAK EAGLE ENTERPRISES, LLC dba ADAK TELEPHONE UTILITY

BY: *Larry Mayes*
Larry Mayes

Title: General Manager

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OCT 28 2004

State of Alaska
Regulatory Commission of Alaska

RCA NO. 702	ORIGINAL	SHEET NO. 7
	CANCELING	SHEET NO.
ADAK EAGLE ENTERPRISE, LLC dba ADAM TELEPHONE UTILITY		

SERVICE AREA DESCRIPTION

On Adak Island, that part of the island east of the Bay of Islands and north of Latitude 51°47'15"N.

The area described contains approximately 61,000 acres of land formerly considered the U.S. Naval Facility Military Reservation on Adak Island, Alaska. The area south of 51°47'15"N is designated Aleutian Islands Wilderness.

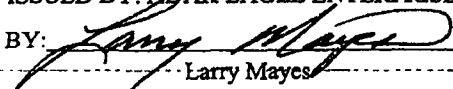
T94S, R194W, All Sections
T95S, R194W, All Sections
T95S, R195W, All Sections
T95S, R196W, All Sections
T96S, R193W, All Sections
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T96S, R195W, All Sections
T96S, R196W, All Sections on Adak Island
T97S, R195W, All Sections North of 51° 47' 15" North Latitude
T97S, R196W, All Sections North of 51° 47' 15" North Latitude
T97S, R197W, All Sections North of 51° 47' 15" North Latitude on Adak Island
In reference to the Seward Meridian.

Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAM EAGLE ENTERPRISES, LLC dba ADAM TELEPHONE UTILITY

BY:


Larry Mayes

Title: General Manager

ATTACHMENT C

PAGE 3 OF 3

RCA NO. 702 ORIGINAL SHEET NO. 97
 CANCELING SHEET NO.
 ADAK EAGLE ENTERPRISE, LLC dba ADAK TELEPHONE UTILITY

RECEIVED
 OCT 28 2004
 State of Alaska
 Regulatory Commission of Alaska

8.0 RATE SCHEDULES

8.01 Access Service – Business and Residence

(a) Applicability

The rates and terms specified herein apply to customers where facilities and conditions permit within the exchange areas as defined on the map filed as a part of this tariff.

The monthly recurring charges for this service are in addition to all other applicable rates and charges filed in this tariff.

(b) Flat Rate Fees	<u>Monthly Recurring Charge</u>
Business Exchange Access Service	
- Single Line (per Access Line)	\$130.00
- Second Business line	\$123.50
- Third Business Line	\$117.00
- Fourth Business Line and more	\$110.50
Business Data Lines	\$75.00
Residential Exchange Access Service	
- Single Line	\$100.00
- Second Residential Line	\$75.00

Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAK EAGLE ENTERPRISES, LLC dba ADAK TELEPHONE UTILITY

BY:  Title: General Manager
 Larry Mayes

Adak Telephone Utility
Estimated Plant & Expenses
2005

Average Investment	
General Support Assets	284,881
Central Office Assets	521,541
Cable & Wire Facilities Assets	<u>2,233,879</u>
	3,040,301
Accumulated Depreciation	(119,585)
	2,920,716
Materials & Supplies	5,000
Customer Deposits	<u>(3,500)</u>
Net Telephone Plant (Average)	2,922,216
Estimated Expenses	
Plant Specific Operations	287,667
Plant Non-Specific Operations	67,988
Depreciation and Amortization	167,395
Customer Operations Expense	44,548
Corporate Operations Expense	<u>387,726</u>
	<u>955,324</u>

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Adak Eagle Enterprises, LLC)	
d/b/a Adak Telephone Utility)	CC Docket No. 96-45
)	
Petition for Waiver of Sections 36.611, 36.612,)	
54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and)	
69.3(e)(6) of the Commission's Rules)	

ORDER

Adopted: December 29, 2005

Released: December 30, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (Adak Telephone), a new local exchange carrier (LEC) in Alaska, waivers of certain Commission rules so that it may receive high-cost loop support based on projected costs until historical costs become available.¹ Adak Telephone will be eligible to receive high-cost universal service support as of the date it was designated an eligible telecommunications carrier (ETC). Further, we grant Adak Telephone's request for waiver of the Commission's rules so that it may participate immediately in the National Exchange Carrier Association's (NECA) pools and tariffs.

II. BACKGROUND

2. *Petition.* On February 9, 2005, Adak Telephone filed a petition for waiver of certain Commission rules so that it may receive immediate federal high-cost universal service support. The Wireline Competition Bureau (Bureau) released a public notice on May 27, 2005, seeking comment on the petition for waivers.² Adak Telephone proposes to create a new study area in the state of Alaska in an area that has never been part of any study area or previously served by any designated ETC.³ This new

¹ See Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs, CC Docket No. 96-45 (filed February 9, 2005) (Petition). Adak Telephone also requests, if necessary, a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules. 47 C.F.R. Part 36 App. We conclude that such waiver is not needed. See *infra* para. 6.

² See Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Seeks Waiver of Sections 36.611, 36.612, 54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and 69.3(e)(6) of the Commission's Rules and, if necessary, a Waiver of the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 10432 (2005). The Regulatory Commission of Alaska (Alaska Commission) and the Alaska Telephone Association filed comments on June 10 and June 8, 2005, respectively, in support of Adak Telephone's petition.

³ See Petition at 5.

service area is on Adak Island, Alaska, a remote island that formerly housed a United States Navy (Navy) complex.⁴ The Navy installed and operated its own utility facilities, including a communications system, until the closure of the Adak Naval Complex in 2000.⁵ The record developed by the Alaska Commission shows that Adak Telephone was the only entity willing to undertake the provision of public telephone service on Adak Island.⁶ Adak Telephone argues that while it has been using the plant installed by the military (much of which is outdated) and a digital switch to provide service to the residents of Adak Island, it must replace virtually all of the existing plant and expand its operations in order to provide adequate and reliable service.⁷ Adak Telephone explains that these efforts will require substantial construction and installation projects and that Adak Telephone will incur significantly higher costs associated with obtaining a skilled workforce.⁸ Adak Telephone states that it has applied for a \$6.2 million loan from the Rural Utilities Service (RUS) to cover the necessary costs to upgrade the system.⁹

3. Adak Telephone also requests waivers of sections 36.611, 36.612, 69.2(hh), and 69.3(e)(6) of the Commission's rules.¹⁰ Waiver of sections 36.611 and 36.612 of the Commission's rules would enable Adak Telephone to receive accelerated high-cost loop support payments based on projected costs until historical costs become available.¹¹ Waiver of sections 69.2(hh) and 69.3(e)(6) would permit Adak Telephone to become a member of NECA and to participate in the NECA pools and tariffs.¹² In addition, Adak Telephone requests waivers of sections 54.301(b), 54.314(d), and 54.903(a)(3) to allow it

⁴ Adak Island is an island located in the Aleutian chain that was used by the United States military beginning in the 1940s. Adak Telephone's service area consists of that portion of Adak Island that was the former Adak Naval Complex. The remainder of Adak Island is part of the Alaska Maritime National Wildlife Refuge. *See id.* at 3. Currently, the number of working access lines on Adak Island varies from 75 for year-round residents to 160 during the summer months. *See id.*

⁵ Military operations ended on Adak Island on March 31, 1997, and the Navy completed its withdrawal effective September 30, 2000. *See id.*

⁶ *See* Alaska Commission Comments at 2. Upon withdrawal, the Navy transferred all utilities to the Adak Reuse Corporation (ARC), a public local redevelopment authority empowered to facilitate reuse and redevelopment of the Adak Naval Complex. Initially, Adak Telephone managed ARC's telephone utility services. ARC subsequently conveyed all utilities except communications to the City of Adak. The city declined to accept the communications system. On September 19, 2003, the Alaska Commission transferred ARC's temporary operating authority to Adak Telephone. Effective March 17, 2004, ownership of most of the land and improvements of the Adak Naval Complex were conveyed to the Aleut Corporation, a regional corporation established under the Alaska Native Claims Settlement Act. Adak Telephone has obtained a long-term lease of the existing communications facilities, but states that it will own all future additions and improvements constructed to provide local exchange service. *See* Petition at 3-6; Alaska Commission Comments, Appendix A at 4 & nn.8-9. On November 23, 2005, the Alaska Commission granted Adak Telephone a permanent certificate of public convenience and necessity to provide local exchange service in Adak, Alaska. *See* Second Supplement to Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs, CC Docket No. 96-45 (filed December 7, 2005) (attaching State of Alaska, Regulatory Commission of Alaska, Application by Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility for a Certificate of Public Convenience and Necessity to Provide Local Exchange Service in Alaska, Order Granting Permanent Certificate, Modifying Reporting Requirements, Requiring Filing, and Closing Docket, U-03-76, Order No. 4 (adopted Sept. 23, 2005)).

⁷ *See* Petition at 6. The military's communications system consisted of an analog private branch exchange switch, copper cable facilities, and limited amounts of fiber optic cable. *See id.* at 4.

⁸ *See id.*

⁹ *See id.*

¹⁰ 47 C.F.R. §§ 36.611, 36.612, 69.2(hh), 69.3(e)(6)

¹¹ *See* Petition at 9-12.

¹² *Id.* at 15-17.

to receive high-cost loop support, local switching support (LSS) and interstate common line support (ICLS) beginning January 1, 2005.¹³ Adak Telephone also asks that we grant on our own motion any other waivers needed to expedite receipt of universal service support and participation in NECA pools and tariffs.¹⁴ Adak Telephone maintains that granting these waivers is consistent with the Commission's goal of assisting carriers in serving high-cost rural areas and maintaining affordable local service rates, and will allow Adak Telephone and its customers the benefit of cost savings and lower rates available through participation in NECA pools and tariffs.¹⁵

4. *Standard for Waiver.* Generally, the Commission may waive its rules for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

III. DISCUSSION

A. Study Area Waiver

5. A study area is a geographic segment of an incumbent LEC's telephone operations. The Commission froze all study area boundaries effective November 15, 1984 to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support.¹⁹ A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.²⁰

6. We conclude that a study area waiver is not necessary under the circumstances of this petition and thus we decline to grant Adak Telephone such a waiver. In reaching our decision, we agree with the conclusions of the Alaska Commission that the area Adak Telephone proposes to serve is not within any existing study area, and thus a study area waiver is not needed.²¹ Specifically, the record shows that

¹³ *Id.* at 14-15. 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a)(3).

¹⁴ Petition at 18.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*), adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 C.F.R. Part 36 App.

²⁰ *Part 67 Order* at para. 1.

²¹ See Alaska Commission Comments at 2. We note that our conclusion is consistent with the Commission's finding in the *Skyline Order* because Adak Telephone is not seeking to create a new study area from within one or more existing study areas. In the *Skyline Order*, the Commission clarified that a study area waiver request is necessary only when a company is seeking to create a new study area from within one or more existing study areas. See *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, Order, 19 FCC Rcd 6761, 6766, para. 13 (2004) (*Skyline Order*).

because the previous provider was the Navy, the proposed service area has never been previously served by any certificated LEC or designated ETC.²²

B. Waiver of Sections 36.611 and 36.612

7. *Rules 36.611 and 36.612.* Adak Telephone requests a waiver of sections of 36.611 and 36.612 of the Commission's rules in order to receive immediate high-cost loop support payments based on its projected costs.²³ High-cost loop support is calculated using data provided by incumbent LECs pursuant to the Commission's cost accounting and data collection requirements.²⁴ In accordance with section 36.611 of the Commission's rules, on July 31 of each year, incumbent LECs file the preceding year's loop cost data with NECA.²⁵ Each rural carrier's high-cost loop support for the following year is based on the relationship between the carrier's study area average cost per loop and the nationwide average cost per loop, as limited by the indexed cap.²⁶ Because the cost data are not submitted by carriers until seven months after the end of a calendar year (*i.e.*, July 31), and NECA requires time to analyze the data and make the necessary nationwide calculations, carriers generally do not receive high-cost loop support based on these data until the beginning of the second calendar year after the costs are incurred.²⁷ As a result, carriers without historical data, such as newly established carriers, may wait up to two years before receiving any high-cost loop support payments. Under section 36.612 of the rules, however, carriers can update their data on a quarterly basis and receive support earlier than under section 36.611.²⁸

8. We find that special circumstances warrant a deviation from sections 36.611 and 36.612 of the Commission's rules, and that it is in the public interest to grant Adak Telephone's waiver request so that it may receive high-cost loop support prior to 2007. Absent universal service support, Adak Telephone would continue to have extremely high monthly basic local service rates of \$100 and \$130 for residential and business customers, respectively.²⁹ The Alaska Commission confirms that the network previously run by the Navy is outdated and, in certain instances, deteriorated, and that Adak Telephone must make system upgrades to provide modern, reliable telecommunications services in an area that is expensive to serve.³⁰ The Alaska Commission approved interim residential service rates that are more than four times the national average urban rate.³¹ Without immediate access to high-cost loop support,

²² See Petition at 8.

²³ See Petition at 9-12. To facilitate immediate high-cost loop support payments, Adak Telephone proposes to submit to NECA a rolling annualized average of current costs, subject to quarterly true-up adjustments based on actual costs. See *id.* at 13. Final high-cost loop support payments for the interim period would be based on actual costs for that period. Adak Telephone notes that the Bureau has previously approved this methodology. *Id.* (citing *Border to Border Communications, Inc., Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, AAD 94-61, 10 FCC Rcd 5055, 5057, paras. 5-14 (Com. Car. Bur. 1995)).

²⁴ See 47 C.F.R. Parts 36, 54, and 69.

²⁵ See 47 C.F.R. § 36.611.

²⁶ See 47 C.F.R. § 36.622.

²⁷ See 47 C.F.R. § 36.611.

²⁸ 47 C.F.R. § 36.612.

²⁹ Petition at 11.

³⁰ Alaska Commission Comments at 2.

³¹ *Id.* As of October 15, 2004, the average urban residential rate was \$24.31. See Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* at Table 1.1 (May 2005).

Adak Telephone's customers would have to wait at least two years for local service rate relief due to the customary lag in receiving such support.³²

9. We find that granting Adak Telephone's request is consistent with the Bureau's treatment of similar requests. Requests for waiver of sections 36.611 and 36.612 of the Commission's rules have only been granted in limited circumstances, primarily to accelerate the provision of support to cover costs incurred by new carriers initiating or extending service in predominantly unserved areas.³³ In these limited instances, newly established carriers lacking historical cost data have been allowed to receive support based on estimated costs that are subject to true-up.³⁴ Where requests for waiver of sections 36.611 and 36.612 have been granted, the Bureau determined that delaying the timing of high-cost loop support under the circumstances presented could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.³⁵ We agree with Adak Telephone that denial of immediate high-cost loop support could have a similar effect here.

10. We further find that delaying Adak Telephone's high-cost support would impair its ability to provide telecommunications services at affordable rates and, thus, in these unique circumstances, strict application of our rules may not further the goals of section 254 of the Communications Act of 1934, as amended (the Act).³⁶ Accordingly, we grant Adak Telephone a waiver of sections 36.611 and 36.612 of the Commission's rules to the extent necessary to permit it to receive high-cost loop support for the period beginning May 25, 2005, the date the Alaska Commission designated it an ETC.³⁷ Adak Telephone's support initially, for the period May 25, 2005 through December 2006, will be based on annualized current costs followed by true-ups using actual costs. This methodology is consistent with previous waivers of sections 36.611 and 36.612.³⁸ We direct Adak Telephone to submit quarterly updates of its actual costs in accordance with the Commission's rules, so that NECA may determine whether adjustments for the 2005 and 2006 high-cost loop support amounts are necessary.³⁹ Payments for periods subsequent to December 2006 will be based on historic data in

³² Once Adak Telephone begins receiving universal service support and participating in NECA pools and tariffs, the Alaska Commission will require it to reduce local service rates to reflect those sources of revenues. See Petition at 11.

³³ The Bureau most recently granted such a request in *Mescalero*. See *Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's Rules*, Order, CC Docket No. 96-45, 16 FCC Rcd 3813 (Acc. Pol. Div. 2001) (*Mescalero*) (granting waiver of sections 36.611 and 36.612 of the Commission's rules to newly-formed, tribally-owned carrier expanding service to unserved residences on American Indian reservation).

³⁴ *Mescalero*, 16 FCC Rcd at 3825-26, paras. 28-30.

³⁵ *Id.*, 16 FCC Rcd at 3824, para. 26. See also 47 U.S.C. § 254(b).

³⁶ 47 U.S.C. § 254(b). Section 254(b) of the Act provides, among other things, that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

³⁷ We note that Adak Telephone requests high-cost loop support effective January 1, 2005. See Petition at 1. The Alaska Commission designated Adak an ETC on May 25, 2005, and section 254(e) of the Act states that only an ETC designated under section 214(e) shall be eligible to receive federal universal service support. See Alaska Commission Comments at 3, Appendix A. See also 47 U.S.C. §§ 214(e), 254(e).

³⁸ See, e.g., *Mescalero*, 16 FCC Rcd at 3824-26, paras. 26-30.

³⁹ See 47 C.F.R. § 36.612.

accordance with the Commission's rules.⁴⁰ In its petition, Adak Telephone provided projections of its high-cost loop support for 2005.⁴¹ Based on Adak Telephone's filings, we expect that Adak Telephone will receive approximately \$302,658 in projected high-cost loop support for 2005, which is substantially less than one percent of the fund.⁴² In the future, we expect that Adak Telephone will receive support based on its actual costs.

C. Waiver of Sections 54.301(b), 54.314(d), and 54.903(a)(3).

11. *Rules 54.301(b), 54.314(d), and 54.903(a)(3).* Adak Telephone seeks waiver of Commission rules 54.301(b), 54.314(d), and 54.903(a)(3) so that it may receive immediate universal service support payments. Pursuant to section 54.314 of the Commission's rules, a state that desires rural incumbent LECs within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative Company (USAC).⁴³ The certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of the subsequent calendar year, and by January 1 to receive support beginning in the second quarter. In addition, once a carrier is granted ETC status, it must file certain data with USAC before universal support payments can begin to flow. Section 54.301(b) of the Commission's rules provides that incumbent LECs file certain data with USAC by October 1 of each year to receive LSS for the following calendar year.⁴⁴ Section 54.903(a)(3) of the Commission's rules provides that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.⁴⁵ In addition, section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.⁴⁶

12. We find that good cause exists to waive the applicable filing deadlines in sections 54.301(b), 54.314(d), and 54.903(a)(1) and (3) in order that Adak Telephone may be eligible to receive universal service support as of May 25, 2005, the date it received ETC designation from the Alaska Commission. Having concluded earlier that Adak Telephone should be eligible for immediate high-cost loop support in order to provide affordable telecommunications services, the granting of these waivers is necessary in order for Adak Telephone to be eligible to receive all available universal service support as of the date of its ETC designation, May 25, 2005.

13. Specifically, we grant Adak Telephone a waiver of the January 1, 2005 state certification filing deadline, pursuant to section 54.314(d) so that it may be eligible to receive LSS and high-cost loop

⁴⁰ See 47 C.F.R. §§ 36.611-612.

⁴¹ See Petition at 9 (projecting this amount to be \$499,865). See also Letter from Dean D. Thompson, Counsel for Adak Telephone, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed Oct. 24, 2005).

⁴² In its petition, Adak Telephone states that its projected high-cost loop support for 2005 would be approximately \$499,865. See Petition at 9. Because we are approving Adak Telephone's request based on its ETC designation date of May 25, 2005, the pro-rated amount of high-cost loop support for 2005 should be approximately \$302,658. We expect Adak Telephone's high-cost loop support to increase to its projected annual amount of approximately \$499,865 in 2006.

⁴³ 47 C.F.R. § 54.314. If a state misses the October 1 deadline, it must file the certification by January 1 for support to begin in the second quarter of the year, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. See 47 C.F.R. § 54.314(d)(1)-(4).

⁴⁴ 47 C.F.R. § 54.301(b). Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS. See 47 C.F.R. § 54.301.

⁴⁵ 47 C.F.R. § 54.903(a)(3).

⁴⁶ 47 C.F.R. § 54.903(a)(1).

support, pursuant to sections 54.301 and Part 36, Subpart F, effective May 25, 2005. We note that the Alaska Commission submitted the required certification to the Commission and USAC, pursuant to section 54.314(a), on June 10, 2005.⁴⁷ In addition, we grant Adak Telephone a waiver of the October 1, 2004 and October 1, 2005 data filing deadlines, pursuant to section 54.301(b) so that it may be eligible to receive LSS as of May 25, 2005.⁴⁸ Effectively, our granting of a waiver of the October 1, 2004 deadline allows Adak Telephone to be eligible to receive LSS from the date of its ETC designation through the end of 2005. Our granting of a waiver of the October 1, 2005 deadline allows Adak Telephone to receive LSS for 2006. We also grant Adak Telephone a waiver of the March 31, 2005, and July 31, 2005 data filing deadlines set forth in sections 54.903(a)(1) and 54.903(a)(3) of the Commission's rules for ICLS.⁴⁹ A waiver of these deadlines allows Adak Telephone to be eligible to receive ICLS support as of May 25, 2005.

D. Waiver of Section 69.2(hh) and 69.3(e)(6) and related waivers.

14. *Rules 69.2(hh) and 69.3(e)(6)*. Adak Telephone requests a waiver of section 69.2(hh) in order that it may become a member of NECA, participate in NECA pools and receive federal universal service support.⁵⁰ Adak Telephone also requests a waiver of section 69.3(e)(6) of the Commission's rules to allow it to expeditiously enter NECA's tariff outside the annual election period.⁵¹ The Commission's rules regarding participation in NECA tariffs and pools, and its rules regarding universal service support for incumbent LECs, do not specifically address companies, such as Adak Telephone, that come into existence after the enactment of the Telecommunications Act of 1996.⁵² In order to be a member of NECA and to participate in the NECA tariffs and pools, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.⁵³ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent LEC as defined in section 251(h)(1) of the Act.⁵⁴ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act, or a successor or assign of an incumbent LEC.⁵⁵ For purposes of calculating universal service support, Part 36 of the Commission's rules applies to incumbent LECs, and Part 54 of the Commission's rules distinguishes between incumbent

⁴⁷ See Letter from Kate Giard, Chairman, Regulatory Commission of Alaska to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed June 10, 2005).

⁴⁸ Adak Telephone is only eligible to receive universal service support as of the date of its ETC designation. See *supra* para. 12.

⁴⁹ In order to receive ICLS, Adak Telephone is required to file with the fund Administrator and the Commission, on the date it first files its line count information pursuant to section 54.903, a certification that all ICLS support provided to Adak Telephone will be used only for the provision and maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.903, 54.904.

⁵⁰ See Petition at 15.

⁵¹ *Id.* at 17

⁵² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁵³ See 47 C.F.R. § 69.601.

⁵⁴ 47 C.F.R. § 69.2(hh).

⁵⁵ See 47 U.S.C. § 251(h)(1).

LECs and competitive ETCs.⁵⁶ Incumbent LEC for purposes of Part 54 of the Commission's rules has the same meaning as that term is defined in section 251(h)(1) of the Act.⁵⁷

15. We grant Adak Telephone's request for waiver of sections 69.2(hh) and 69.3(e)(6) of the Commission's rules in order to allow the carrier to join NECA and to participate immediately in NECA tariffs and pools. Adak Telephone, a newly-formed company, is neither a successor nor assign of an incumbent LEC because the Navy, as the previous operator of communications services on Adak Island, was not an incumbent LEC. Therefore, Adak Telephone does not meet the definition of an incumbent LEC as defined in sections 54.5 and 69.2(hh) of the Commission's rules and section 251(h)(1) of the Act.⁵⁸

16. We conclude that Adak Telephone has demonstrated that special circumstances warrant a waiver of sections 69.2(hh) and 69.3(e)(6) of the Commission's rules. We also grant Adak Telephone, on our on motion, a waiver of the definition of incumbent LEC in Part 36 and section 54.5. Participation in NECA will allow Adak Telephone to avoid the costs of filing and maintaining its own company-specific interstate tariffs. Adak Telephone estimates that it has between 75 to 160 subscribers, depending on the season.⁵⁹ Because Adak Telephone has relatively few customers, the costs of preparing company-specific tariffs could be disproportionately excessive. Therefore, we find that it is in the public interest to permit Adak Telephone and its customers to benefit from the cost savings and lower rates available through immediate NECA participation. Without such participation in NECA's pools it is likely that Adak Telephone's company-specific interstate access rates would be prohibitively high.⁶⁰

E. Other Matters

17. On May 11, 2001, the Commission adopted an order requiring incumbent LECs to freeze, on an interim basis, the Part 36 jurisdictional separations factors beginning July 1, 2001.⁶¹ In that order, the Commission addressed the recalculation of frozen allocation factors when a carrier converts from average schedule-based interstate settlements to cost-based interstate settlements.⁶² In those circumstances, the carrier has not previously performed cost studies to separate certain types of costs. To address this issue, the Commission provided that rate-of-return carriers that convert from average schedule to cost company status during the freeze "shall calculate new factors based on the twelve-month period immediately following the conversion and then freeze the new factors for the remainder of the freeze."⁶³ Because Adak Telephone has not previously performed such cost studies, it is appropriate to apply the same

⁵⁶ For example, section 36.611 of the Commission's rules governs the submission of data to NECA for purposes of calculating high-cost support and only applies to incumbent LECs. Competitive ETCs file line count data and their support is calculated pursuant to section 54.307 of the Commission's rules. See 47 C.F.R. §§ 36.611, 54.307.

⁵⁷ See 47 C.F.R. §§ 51.5, 54.5. Unlike Parts 54 and 69 of the Commission's rules, Part 36 does not include an explicit definition of incumbent LEC. The term "incumbent local exchange carrier" is used throughout Part 36, however, and in some cases references the Commission's definition of rural incumbent LEC in section 54.5 of the Commission's rules. See, e.g., 47 C.F.R. § 36.622(a).

⁵⁸ See 47 U.S.C. § 251(h)(1); 47 C.F.R. §§ 51.5, 54.5, 69.2(hh).

⁵⁹ Petition at 5.

⁶⁰ We note that NECA does not object to Adak Telephone participating in its pools. See Letter from Tracey E.J. Saltenberger, NECA, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed Sept. 30, 2005).

⁶¹ See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*).

⁶² See *Separations Freeze Order*, 16 FCC Rcd at 11406 n.123.

⁶³ *Id.*, 16 FCC Rcd at 11407, para. 53.

requirement, thus "eliminating the need for waiver requests to calculate new factors"⁶⁴ Specifically, we require Adak Telephone for the first twelve months of operation to categorize the telecommunications plant and expenses and develop separations factors in accordance with the separations procedures in effect as of December 31, 2000.⁶⁵

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612, filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

19. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 54.301(b), 54.314(d), 54.903(a)(1) and 54.903(a)(3) of the Commission's rules, 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a)(1) and 54.903(a)(3), filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

20. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 69.2(hh) and 69.3(e)(6) of the Commission's rules, 47 C.F.R. §§ 69.2(hh) and 69.3(e)(6), filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

21. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that waiver of the definition of incumbent LEC in Part 36 and section 54.5 of the Commission's rules, 47 C.F.R. Part 36 and § 54.5, IS GRANTED, as described herein, to Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility.

22. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility is required for the first twelve months of operation

⁶⁴ See *id.*

⁶⁵ See 47 C.F.R. § 36.3(e).

to categorize its telecommunications plant and expenses and develop separations factors pursuant to section 36.3(e) of the Commission's rules, 47 C.F.R. § 36.3(e).

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau